

LEGISLATIVE BILL 692

Approved by the Governor April 3, 1984

Introduced by DeCamp, 40; Schmit, 23; Pappas, 42

AN ACT relating to hospital-medical liability; to amend sections 23-2416, 25-213, 44-2802, 44-2820 to 44-2822, 44-2824, 44-2825, 44-2828 to 44-2833, 44-2837, 44-2840 to 44-2842, 44-2855, and 81-8,227, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to claims and causes of action, election of coverage, qualification of health care providers, limits on liability, the Excess Liability Fund, the Residual Malpractice Insurance Authority, and medical review panels as prescribed; to provide for surcharge adjustments; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 23-2416, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2416. (1) Every claim against a political subdivision permitted under this act shall be forever barred, unless within one year after such claim accrued, the claim is made in writing to the governing body. Except as otherwise provided in this section, all suits permitted by this act shall be forever barred unless begun within two years after such claim accrued. The time to begin a suit under this act shall be extended for a period of six months from the date of mailing of notice to the claimant by the governing body as to the final disposition of the claim or from the date of withdrawal of the claim from the governing body under section 23-2405, if the time to begin suit would otherwise expire before the end of such period.

(2) If a claim is made or filed under any other law of this state and a determination is made by a political subdivision or court that this act provides the exclusive remedy for the claim, the time to make a claim and to begin suit under this act shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the political subdivision, if the time to make the claim and to begin suit under this act would otherwise expire before the end of such period. The time to begin suit under this act may be further extended as provided in subsection (1) of this section.

(3) If a claim is made or a suit is begun under

this act, and if a determination is made by the political subdivision or by the court that the claim or suit is not permitted under this act for any other reason than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the political subdivision, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period.

(4) If a claim is brought under the Hospital-Medical Liability Act, the filing of a request for review under section 44-2840 shall extend the time to begin suit under the Political Subdivisions Tort Claims Act an additional ninety days following the issuance of the opinion by the medical review panel if the time to begin suit under the Political Subdivisions Tort Claims Act would otherwise expire before the end of such ninety-day period.

(5) (4) This section and section 25-213 shall be the only statutes of limitations applicable to tort claims as defined in this act.

Sec. 2. That section 25-213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-213. Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in this chapter, Chapter 23, article 24, the Nebraska Hospital-Medical Liability Act, and sections 81-8,209 to 81-8,239, except for a penalty or forfeiture, or for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, be, at the time the cause of action accrued, within the age of twenty years, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this chapter after such disability shall be removed, and for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof, but in no case longer than ten years, after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem shall be commenced by and against a nonresident or his or her representative.

Sec. 3. That section 44-2802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2802. (1) As used in ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act, unless the context otherwise requires, the definitions in sections 44-2803 to 44-2817 shall apply.

(2) Any legal word or term of art used in

sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act and not otherwise defined shall have such meaning as is consistent with common law.

Sec. 4. That section 44-2820, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2820. (1) ~~No proceeding instituted pursuant to sections 44-2801 to 44-2855 shall be joined with any action for recovery of damages against any health care provider that fails to qualify under sections 44-2801 to 44-2855.~~

(2) Before the plaintiff may recover any damages in any action based on failure to obtain informed consent, it shall be established by a preponderance of the evidence that a reasonably prudent person in the plaintiff's position would not have undergone the treatment had he or she been properly informed and that the lack of informed consent was the proximate cause of the injury and damages claimed.

Sec. 5. That section 44-2821, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2821. (1) Any health care provider who fails to qualify under the Nebraska Hospital-Medical Liability Act sections 44-2801 to 44-2855 shall not be covered by the provisions of such act sections 44-2801 to 44-2855 and shall be subject to liability under doctrines of common law. If a health care provider shall not so qualify, the patient's remedy shall not be affected by the terms and provisions of sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act.

(2) If a health care provider shall qualify under sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act, the patient's exclusive remedy against the health care provider or his or her partner, employer, or employees for alleged malpractice, professional negligence, failure to provide care, breach of contract relating to providing medical care, or other claim based upon failure to obtain informed consent for an operation or treatment shall be as provided by sections 44-2801 to 44-2855, the Nebraska Hospital-Medical Liability Act unless the patient shall have elected not to come under the provisions of sections 44-2801 to 44-2855 such act. Unless the patient or his or her representative shall have (a) elected not to be bound by the terms of sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act, (b) filed such election with the director in advance of any treatment, act, or omission upon which any claim or cause of action is based, and (c) notified the health care provider of election as soon as is reasonable under the circumstances that such patient has so elected, it shall be conclusively presumed that the patient has elected to be bound by the terms and provisions of sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act. Such election may be made by ~~the mother for her~~ either

legal parent for an unborn or newborn child. Unless the mother a legal parent of an unborn child or the guardian or other representative of a minor or incompetent makes the election in the manner provided in sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act for such unborn person, minor, or incompetent, such person shall be deemed to be subject to the terms and provisions of sections 44-2801 to 44-2855 such act.

(3) An election of a patient not to be bound by sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act shall be effective for a period of two years after filing unless such election is withdrawn by the patient, and shall be ineffective after such two-year period, unless renewed in writing and filed with the director. The patient or his or her representative may revoke the election in writing at any time and a copy of such revocation shall be forwarded to the director within five days after the same is made.

(4) Each health care provider who has qualified under sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act shall post and keep posted in his or her waiting room or other suitable location a sign of a size and type to be prescribed by the director stating: (name of health care provider) has qualified under the provisions of the Nebraska Hospital-Medical Liability Act. Patients will be subject to the terms and provisions of that act unless they file a refusal to be bound by the act with the Director of Insurance of the State of Nebraska.

Sec. 6. That section 44-2822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2822. Subject to the requirements of sections 44-2840 to 44-2846, a patient or his or her representative having a claim under sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act for bodily injury or death on account of alleged malpractice, professional negligence, failure to provide care, breach of contract, or other claim based upon failure to obtain informed consent for an operation or treatment, may file a petition or complaint in any court of law having requisite jurisdiction, and demand the right to a jury trial. If a jury trial is not demanded by the plaintiff in his petition or complaint, any defendant shall have the right to demand a jury trial at the time his answer is filed. If no jury is demanded by any party at the time and in the manner provided in this section, trial shall be to the court. No dollar amount or figure shall be included in the demand in any malpractice petition or complaint, but the petition shall ask for such damages as are reasonable in the premises.

Sec. 7. That section 44-2824, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2824. (1) To be qualified under sections

44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, or partner shall:

(1) (a) File with the director proof of financial responsibility, pursuant to section 44-2827, in the amount of one hundred thousand dollars for each occurrence. In the case of physicians or nurse anesthetists and their employers, employees, or partners, an aggregate liability amount of three hundred thousand dollars for all occurrences or claims made in any policy year for each named insured may be provided. In the case of hospitals and their employees, an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year may be provided. Such policy may be written on either an occurrence or a claims-made basis. Such qualification shall remain effective only as long as insurance coverage as required remains effective; and

(2) (b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsection (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) Any claim or cause of action against a health care provider shall be subject to the facts and circumstances relating to the health care provider's qualification under the Nebraska Hospital-Medical Liability Act in effect at the time of the occurrence of the alleged wrongful acts and shall not be affected by the fact that the health care provider was or was not qualified under the Nebraska Hospital-Medical Liability Act at the time the action was instituted. A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the Nebraska Hospital-Medical Liability Act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under such act.

Sec. 8. That section 44-2825, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2825. (1) The total amount recoverable under ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed five hundred thousand dollars for any occurrence on or before December 31, 1984, and one million dollars for any occurrence after December 31, 1984.

(2) A health care provider qualified under ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act shall not be liable to any patient or his or her representative who is covered by ~~sections 44-2801 to 44-2855~~ such act for an amount in excess of one hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act is effective with reference to such patient.

(3) Subject to the overall ~~limits~~ limit of five hundred thousand dollars from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

Sec. 9. That section 44-2828, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2828. Except as provided in section 25-213, any Any action to recover damages based on alleged malpractice or professional negligence or upon alleged breach of warranty in rendering or failing to render professional services shall be commenced within two years next after the alleged act or omission in rendering or failing to render professional services providing the basis for such action, except that if the cause of action is not discovered and could not be reasonably discovered within such two-year period, the action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for malpractice or professional negligence or breach of warranty in rendering or failing to render professional services more than ~~six~~ ten years after the date of rendering or failing to render such professional service which provides the basis for the cause of action.

Sec. 10. That section 44-2829, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2829. (1) There is hereby created an Excess Liability Fund to be collected and received by the director for the exclusive use and purposes stated in ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability

Act. Such fund and any income from it shall be held by the State Treasurer in trust, deposited in a separate account, and invested and reinvested pursuant to law.

(2) To create the fund, an annual surcharge shall be levied on all health care providers in Nebraska who have qualified under sections 44-2824 and 44-2827. The surcharge for each health care provider shall be as determined by the director subject to the following limitations:

(a) The annual surcharge shall not exceed fifty per cent of the annual premium paid by such health care provider for maintenance of current financial responsibility as provided in sections 44-2827 and 44-2837 to 44-2839; and

(b) The charge shall not exceed the amount necessary to maintain the fund in the amount stated in section 44-2830.

(3) Such surcharge and any primary insurance premiums due under sections 44-2837 to 44-2839 shall be due and payable within thirty days after the health care provider has qualified in Nebraska pursuant to section 44-2824, and shall be payable annually thereafter in such amounts as may be determined by the director insofar as the surcharge is concerned and by the risk manager insofar as primary liability coverage is concerned.

(4) The net premiums payable for primary insurance provided by the risk manager pursuant to sections 44-2837 to 44-2839 shall be deposited in the fund at least annually by the risk manager.

(5) If the annual premium surcharge or premiums for primary insurance under sections 44-2837 to 44-2839 are not paid within the time specified in subsection (3) of this section, the qualification of the health care provider under section 44-2824 shall be suspended until the annual premiums are paid. Such suspension shall not be effective as to patients claiming against the health care provider unless, at least thirty days before the effective date of the suspension, a written notice giving the date upon which the suspension becomes effective has been provided by the director to the health care provider.

(6) All expenses of collecting, protecting, and administering the fund shall be paid from the fund.

Sec. 11. That section 44-2830, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2830. If the fund shall exceed the sum of four million five hundred thousand dollars at the end of any calendar year after the payment of all claims and expenses and after adding all reversions to the fund, and if no reinsurance is involved, the director shall reduce the surcharge required by section 44-2829 in order to maintain the fund at an approximate level of five million dollars. Beginning on January 1, 1985, and on January 1 of each succeeding year, the director shall adjust the amount

of the surcharge to maintain the fund at a level which is sufficient to pay all anticipated claims for the next year and to maintain an adequate reserve for future claims. Prior to making such an adjustment, the director shall conduct a public hearing concerning the proposed adjustment and shall give due regard to the size of the existing fund, the number and size of potential claims against the fund, the number of participating providers, changes in the cost of living, and sound actuarial principles. If the fund is reinsured, the director shall determine a lesser level at which the fund shall be maintained because of the reinsurance carried, and may reduce the surcharge to provide for the reinsurance and maintain the fund at the lesser level determined by him or her to be reasonable under the circumstances.

Sec. 12. That section 44-2831, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2831. ~~(1)~~ All valid claims from the Excess Liability Fund shall be computed on December 31 of the year in which the claim becomes final, and such claims shall be paid on or before January 15-

~~(2)~~ (1) The director may, at any time, analyze the fund to determine if the amount in such fund is inadequate to pay in full all claims allowed or to be allowed during the calendar year. Upon such determination, the director shall have the power to levy a special surcharge on all health care providers who have qualified under sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act, which special surcharge shall be an amount sufficient to permit full payment of all claims allowed against the fund during a calendar year. The special surcharge shall be levied against all health care providers who have qualified under sections 44-2801 to 44-2855 the Nebraska Hospital-Medical Liability Act on the date of the special surcharge or at any time during the preceding twelve months and shall be in an amount proportionate to the surcharge each health care provider has paid to the fund. Such special surcharge shall be due and payable within thirty days after the same is levied.

~~(3)~~ (2) The director shall have authority to cause all or any part of the potential liability of the Excess Liability Fund to be reinsured, if such reinsurance is available, on a fair and reasonable basis. The cost of such reinsurance shall be paid by the fund and the fact of the reinsurance shall be taken into account in determining the surcharge as provided in sections 44-2829 and 44-2830, but in no event shall the surcharge exceed fifty per cent of the annual premium paid by a health care provider for maintenance of current financial responsibility.

Sec. 13. That section 44-2832, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2832. (1) The Director of Administrative Services shall issue a warrant drawn on the fund in the

amount of each claim submitted to him on or before January 15 of each year by the director. All claims against the fund shall be made on a voucher or other appropriate request by the director after he or she has received:

(a) A certified copy of a final judgment in excess of one hundred thousand dollars against a health care provider and in excess of the amount recoverable from all health care providers;

(b) A certified copy of a court-approved settlement in excess of one hundred thousand dollars against a health care provider and in excess of the amount recoverable from all health care providers; or

(c) In case of claims based on primary insurance issued by the risk manager under sections 44-2837 to 44-2839, a certified copy of a final judgment or court-approved settlement requiring payment from the fund.

(2) The amount paid from the fund for excess liability may not exceed ~~four hundred thousand dollars for any one occurrence under any circumstances and, when added to the payments by all health care providers, the aggregate may not exceed five hundred thousand dollars in any case~~ the maximum amount recoverable pursuant to subsection (1) of section 44-2825. The amount paid from the fund on account of a primary insurance policy issued by the risk manager to a health care provider under sections 44-2837 to 44-2839 may not exceed one hundred thousand dollars for any one occurrence covered by such policy under any circumstances.

Sec. 14. That section 44-2833, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2833. (1) If the insurer of a health care provider shall agree to settle its liability on a claim against its insured by payment of its policy limits of one hundred thousand dollars, and the claimant shall demand an amount in excess thereof for a complete and final release, and if no other health care provider is involved, the procedures prescribed in this section shall be followed.

(2) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or, if no action is pending, in one of the district courts of the State of Nebraska, seeking approval of an agreed settlement, if any, or demanding payment of damages from the Excess Liability Fund.

(3) A copy of such petition shall be served on the director, the health care provider, and the health care provider's insurer and shall contain sufficient information to inform the parties concerning the nature of the claim and the additional amount demanded. The health care provider and his or her insurer shall have a right to intervene and participate in the proceedings.

(4) The director, with the consent of the health care provider, may agree to a settlement with the claimant from the Excess Liability Fund. Either the director or the

health care provider may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty days after the petition is filed.

(5) After the petition, agreement, and objections, if any, have been filed, the judge of the court in which such petition is filed shall set the matter for hearing trial as soon as practicable. The court shall give notice of the hearing trial to the claimant, the health care provider, and the director.

(6) At the hearing trial, the director, the claimant, and the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if it has been submitted on agreement without objections. If the director, the health care provider, and the claimant shall be unable to agree on the amount, if any, to be paid out of the Excess Liability Fund, ~~the court shall determine~~ the amount of claimant's damages, if any, in excess of the one hundred thousand dollars already paid by the insurer of the health care provider shall be determined at trial.

(7) The court shall determine the amount for which the fund is liable and render a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the Excess Liability Fund in such a case, the court shall consider the liability of the health care provider as admitted and established by evidence.

(8) Any settlement approved by the court may not be appealed. Any judgment of the court fixing damages recoverable in any such contested proceeding shall be appealable pursuant to the rules governing appeals in any other civil case. ~~tried by the court.~~

Sec. 15. That section 44-2837, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2837. (1) The purpose of sections 44-2837 to 44-2839 is to make malpractice liability insurance available to risks as defined in this section.

(2) There is hereby created the Residual Malpractice Insurance Authority. The Department of Insurance is hereby designated as the authority for the purposes of ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act. The authority shall be empowered to engage in writing medical malpractice liability insurance in this state pursuant to existing law and authorized to insure the health care provider against other liability for injury to persons or property caused by agents, employees, or partners of the health care provider, or by property used in or activities arising from the operations or business of the health care provider. Such insurance coverage against other liability may be provided to the health care provider by the authority only as supplemental professional liability insurance.

(3) The director shall may appoint a risk manager for the authority. The separate, personal, or independent assets of the risk manager shall not be liable for or subject to use or expenditure for the purpose of providing insurance by the authority.

(4) In the administration and provision for malpractice liability insurance by the authority, the risk manager shall:

(a) Be subject to all laws and regulations of this state which apply to malpractice insurance as provided in existing law;

(b) Prepare and file appropriate forms with the Department of Insurance;

(c) Prepare and file premium rates with the Department of Insurance which shall be based on accepted actuarial principles and accepted practices in the insurance industry;

(d) Perform the underwriting function;

(e) Dispose of all claims and litigation arising out of insurance policies;

(f) Maintain adequate books and records;

(g) File an annual financial statement regarding its operations under ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act with the Department of Insurance on forms prescribed by the director;

(h) Obtain private reinsurance for the authority, if available, and the cost thereof shall be paid from the Excess Liability Fund;

(i) Prepare and file a plan of operations with the director for approval; and

(j) Act fairly, reasonably, and responsibly in administering the plan.

(5) The risk manager shall receive as compensation for his or her services a percentage of all premiums received under the terms of this section which shall be computed on a fair and equitable basis as determined by the director. The compensation may be adjusted by the director from time to time.

Sec. 16. That section 44-2840, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2840. (1) Provision is hereby made for the establishment of medical review panels to review all malpractice claims against health care providers covered by ~~sections 44-2801 to 44-2855~~ the Nebraska Hospital-Medical Liability Act in advance of filing such actions.

(2) No action against a health care provider may be commenced in any court of this state before the claimant's proposed petition has been presented to a medical review panel established pursuant to section 44-2841 and an opinion has been rendered by the panel.

(3) The proceedings for action by the medical

review panel shall be initiated by the patient or his or her representative by notice in writing with copy of a proposed petition or complaint served upon the director personally or by registered or certified mail. Such notice shall designate the claimant's choice of the physician to serve on the panel, claimant's suggestion of an attorney to serve, and the court where the action shall be filed, if necessary.

(4) The claimant may affirmatively waive his or her right to a panel review, and in such case the claimant may proceed to file his or her action directly in court. If the claimant waives the panel review, the claimant shall serve a copy of the petition or complaint upon the director personally or by registered or certified mail at the time the action is filed in court.

(5) The exercise of the waiver authorized by this section shall not be subject to attack for the sole reason that the claimant served the director with the notice prescribed by subsection (3) of this section prior to the effective date of this act if the requirements of sections 44-2840 to 44-2847 have not been fulfilled on such date.

Sec. 17. That section 44-2841, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2841. (1) The medical review panel shall consist of one attorney admitted to practice law in the State of Nebraska and three physicians who hold unlimited licenses under the laws of this state to practice medicine. The attorney shall act in an advisory capacity and as ~~chairman~~ chairperson of the panel, but shall have no vote.

(2) The medical review panel shall be selected in the following manner:

(a) All physicians engaged in the active practice of medicine in this state, whether in the teaching profession or otherwise, who hold a license to practice medicine, shall be available for selection;

(b) Each party to the action shall have the right to select one physician and, upon selection, such physician shall be required to serve. The two physicians thus selected shall select the third physician panelist. If one of the health care providers involved is a hospital, a fourth panelist shall be selected who shall be a hospital administrator selected by the hospital;

(c) When there are multiple plaintiffs or defendants, there shall be only one physician or hospital administrator selected per side. The plaintiff, whether single or multiple, shall have the right to select one physician and the defendant, whether single or multiple, shall have the right to select one physician;

(d) A panelist so selected shall serve, except that, for good cause shown, he or she may be excused. To show good cause for relief from serving, the panelist shall be required to serve an affidavit upon a judge of a court

having jurisdiction over the claim when filed. The affidavit shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. The court may excuse the proposed panelist from serving;

(e) Within twenty days after receipt of notification of a proposed panelist by the plaintiff, the defendants shall select a proposed panelist and advise the plaintiff or his or her attorney;

(f) Within twenty days of receipt of notice of any selection, written challenge, without cause, may be made to the panel member. Upon challenge, a party shall select another panelist. If multiple plaintiffs or defendants are unable to agree on a physician panelist or if two such challenges are made and submitted, the judge shall submit a list consisting of three qualified panelists and each side shall strike one and the remaining member shall serve in place of the challenged panelist designated by the party; and

(g) The parties may agree on the attorney member of the board or, if no agreement can be reached, then five proposed attorney members shall be designated by the judge having jurisdiction of the cause. The parties shall then each strike two names alternately with the claimant striking first until both sides have stricken two names and the remaining name shall be the attorney member of the panel.

(3) If the members of the medical review panel have not been selected within one hundred twenty days following filing of the petition or complaint required by section 44-2840, the court shall have authority to select members of the panel and to set a specific date for the hearing.

Sec. 18. That section 44-2842, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2842. (1) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only. If any party to the proceedings fails to submit his or her evidence within a reasonable time after notice from the panel requesting such evidence, the panel may proceed to decide the matter on the evidence previously submitted. The determination of reasonable time shall be made by the panel. The evidence submitted may consist of medical charts, X-rays, laboratory test results, excerpts of treatises, depositions of witnesses including parties, and any other form of evidence allowable by the medical review panel.

(2) Depositions of parties and witnesses may be taken prior to the convening of the panel and prior to the commencement of the action, but, in such event, the attorney for the medical care provider shall be furnished with a copy of the petition which the claimant proposes to file at least ten days before any deposition is taken. The patient shall have the right to request and receive all

medical and hospital records relating to his or her case which would be admissible in evidence in a court of law. The ~~chairman~~ chairperson of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel. A copy of the evidence shall be sent to each member of the panel.

(3) Either party, after submission of all evidence and upon ten days' notice to the other side, shall have the right to convene the panel at a time and place agreeable to the members of the panel. At such time either party shall have the right to present argument concerning any matters relevant to issues to be decided by the panel before the issuance of its report. The ~~chairman~~ chairperson of the panel shall preside at all meetings, which meetings shall be informal.

(4) If the members of the medical review panel have not convened within six months of the initiation of the proceeding, the judge shall have authority to order the panel to convene.

Sec. 19. The Department of Insurance shall adopt and promulgate rules and regulations regarding the administration of the Nebraska Hospital-Medical Liability Act. Such rules and regulations shall relate to issuing notices of payment due and such other matters as may be necessary to promote the efficient operation of the act in accordance with its terms.

Sec. 20. That section 44-2855, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2855. Sections 44-2801 to 44-2855 and section 19 of this act shall be known and may be cited as the Nebraska Hospital-Medical Liability Act.

Sec. 21. That section 81-8,227, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,227. (1) Every tort claim permitted under this act shall be forever barred unless within two years after such claim accrued the claim is made in writing to the State Claims Board in the manner provided by this act. The time to begin suit under this act shall be extended for a period of six months from the date of mailing of notice to the claimant by the board as to the final disposition of the claim, or from the date of withdrawal of the claim from the board under section 81-8,213, if the time to begin suit would otherwise expire before the end of such period.

(2) If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this act provides the exclusive remedy for the claim, the time to make a claim and begin suit under this act shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin suit under this act would otherwise

expire before the end of such period. The time to begin a suit under this act may be further extended as provided in subsection (1) of this section.

(3) If a claim is brought under the Hospital-Medical Liability Act, the filing of a request for review under section 44-2840 shall extend the time to begin suit under the State Tort Claims Act an additional ninety days following the issuance of the opinion by the medical review panel if the time to begin suit under the State Tort Claims Act would otherwise expire before the end of such ninety-day period.

(4) ~~(3)~~ This section and section 25-213 shall constitute the only statutes of limitations applicable to this act.

Sec. 22. That original sections 23-2416, 25-213, 44-2802, 44-2820 to 44-2822, 44-2824, 44-2825, 44-2828 to 44-2833, 44-2837, 44-2840 to 44-2842, 44-2855, and 81-8,227, Reissue Revised Statutes of Nebraska, 1943, are repealed.